

**California Commission  
on  
Health and Safety and Workers' Compensation**

**MINUTES OF MEETING**

Meeting Day and Date: Thursday, February 9, 1995

Meeting Location: State Building  
455 Golden Gate Avenue  
First Floor Auditorium, Room 1194  
San Francisco, California

Commission Members present:

Chairman Robert B. Steinberg  
Commissioner Leonard McLeod  
Commissioner Gerald O'Hara  
Commissioner Tom Rankin  
Commissioner Kristen Schwenkmeyer  
Commissioner Gregory Vach

Commission Members absent:

Commissioner Jim R. Green  
Commissioner James Hlawek

Commission Staff present:

Christine Baker, Executive Officer of the Commission

Division of Workers' Compensation personnel present:

Casey L. Young, Administrative Director

*Welcome and Announcements*

The meeting was called to order at 10:10 AM by Chairman Robert B. Steinberg.

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Chairman Steinberg noted that Casey L. Young, the Administrative Director of the Division of Workers' Compensation was present and asked that Mr. Young give his reports at the beginning of the meeting, rather than later as shown on the meeting agenda. (See Attachment I).

*Reports from the DWC Administrative Director*

At the last Commission meeting on January 12, 1995, the Commissioners asked Executive Officer Christine Baker to request that DWC Administrative Director Casey L. Young report on the following topics:

Permanent Disability Rating Process: status of the backlogs

Information Systems Development

Status of the "construction carve-out" pursuant to Labor Code Section 3201.5.

Status of the efforts to standardize district office procedures and monitor judge (referee) performance.

Mr. Young presented the following reports on those issues.

Permanent Disability Rating Process: status of the backlogs

Mr. Young stated that the permanent disability ratings (PDR) backlog was one of the two biggest problems in the Division of Workers' Compensation. (The other problem is the backlog of liens in the southern California DWC offices.)

Mr. Young said that the PDR backlog resulted from a statutory problem that has now been resolved by the 1993 workers' compensation reform legislation. Pursuant to provisions in the 1989 reform legislation, all "window period"<sup>1</sup> workers' compensation cases had to obtain a permanent disability rating from the DWC Disability Evaluation Unit (DEU). A backlog of rating requests soon developed. The 1993 reform legislation eliminated that requirement for new cases but the Division was left with a large backlog.

Last October or November, Mr. Young realized that "something drastic" had to be done but first the DWC had to determine how many cases were backlogged. They found that there were many requests for ratings with incomplete information sitting around the offices waiting for further documentation. Since only complete

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<sup>1</sup> "Window period" is defined as that period of time from January 1, 1990 through December 31, 1993. The first workers' compensation reform legislation was effective January 1, 1990 and the second workers' compensation reform legislation became effective January 1, 1994. Workers' Compensation cases with the date of injury during the window period are subject to different procedures and requirements than cases with injury dates before and after the window period.

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packages can be rated, all incomplete rating request packages were returned for completion. DWC was then able to determine that it had a backlog of 20,000 requests for summary ratings and a 2,000 case backlog of rating reconsideration requests.

The DWC implemented two measures to deal with the backlog.

The first action taken by DWC was to issue a *DWC Newsline* (Bulletin 94-9) dated November 4, 1994 encouraging claims administrators to attempt to reach a settlement with the injured worker. (See Attachment II) Mr. Young stated that the approach was to have the workers' compensation community go ahead and rate the cases and submit the settlement documents to the DWC. When the workers' compensation judge reviews them, if he or she determines that a formal rating is needed, the WC Judge will obtain a rating from the DEU. Mr. Young said that the DWC was expecting an avalanche of settlement documents from this new procedure but this has not happened yet.

The second action taken by the DWC was to close down the Disability Evaluation Unit one week each month so that the disability evaluators could concentrate on doing the backlogged summary rating requests. During the week the DEU was closed in January 1995, the evaluators were able to deal with 3,500 summary rating requests. On the basis of on that experience, Mr. Young expects to have the summary ratings backlog reduced to 10,000 by the first week of March 1995 and completely eliminated by mid 1995. Mr. Young stated that this approach was working and has proved to be the most productive way to address the backlog.

The number of backlogged rating reconsideration cases has been reduced from 2,000 to 630. Mr. Young indicated that by the end of February 1995, there would be no cases over 90 days old. He eventually hopes to get that figure down to no cases over 45 to 50 days old.

Chairman Steinberg asked if this backlog goes back to the 1989 legislative change which stated that all cases must be rated. Mr. Young replied this was so and that the backlogged cases were only those of unrepresented workers.

Chairman Steinberg asked if it were true that a notice had been sent to the workers' compensation community suggesting that the requirement of rating be ignored and the cases settled anyway. Mr. Young stated that a rating was not required, only a QME was required, and cases were being delayed because of the lack of a rating. Mr. Young said the *DWC Newsline* (Bulletin 94-9) suggested that injured workers enter the system through another mechanism -- through the Board. He stressed that it is the job of the Board to make sure a settlement is fair and if the WC Judge needs further rating, he or she can call upon a disability evaluator.

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Commissioner Vach expressed concern that there are many in the insurance companies who have only a limited knowledge of rating. Mr. Young answered that DWC did not expect them to do the complicated ratings but that there are many simple or straight-forward ratings that can be completed.

Chairman Steinberg asked if it were correct that some of the backlogged cases were two and a half years old. Mr. Young replied that the oldest cases were located in San Diego and they were one year old.

Commissioner Vach asked Mr. Young what the impact would be when the proposed changes to the Permanent Disability Rating Schedule (PDRS) were implemented. Mr. Young responded that since the DEU was going to test the new PDRS by rating a 2,000 case sample, the short-run impact would be to increase the backlog. However, since the new PDRS is expected to make cases faster and easier to rate, it will help reduce the backlog in the long run.

Commissioner Rankin asked Mr. Young if he has noticed any differences between insureds and self-insureds with respect to settlement policy. Mr. Young replied that he has not noticed.

Chairman Steinberg stated that he was trying to get a handle on how much hue and cry there was from the workers' compensation community regarding the summary ratings backlog. Mr. Young said that there was escalating hue and cry over the past year or so and he has responded by increasing the DEU staff by 25% over the past year.

Chairman Steinberg asked if the logjam of backlogged ratings was at the disability evaluators' desks or elsewhere. Mr. Young replied that the evaluators do several types of ratings and that there was a lot of contention for the evaluator's time. He said that it was a management problem that DWC is trying to deal with. Chairman Steinberg asked if retired evaluators could help clear the backlog. Mr. Young stated that he has tried to hire retired evaluators but found that they can make a lot more money in private practice doing ratings for insureds and self-insureds.

Chairman Steinberg asked Mr. Young when he would recommend that the Commission revisit the summary rating backlog problem. Mr. Young suggested that the Commission take another look in June or July 1995.

Information Systems Development

Casey Young reported that DWC had a meeting on January 25, 1995 regarding information systems development. A report of that meeting has been distributed to the Commission members.

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Mr. Young said that DWC has contracted with UC Berkeley Data/Survey Center. UC has contacted all agencies who want workers' compensation information, determined what they wanted and why. UC is then looking at what data is being collected and where. UC will then determine what data DWC will collect. A decision will be made as to who will have access to which pieces of data since some data are confidential. Then the system will be constructed.

Anticipated data collection methods include:

- Electronic data interchange -- must be compatible with the electronic data interchange (EDI) of the International Association of Industrial Accident Boards and Commissions (IAIABC).
- The WCAB/Rehabilitation online system
- The DEU/Claims online system
- Other systems. DWC would coordinate with the Workers' Compensation Insurance Rating Bureau (WCIRB), DIR's Self-Insurance Plans (SIP) and with the Employment Development Department (EDD).
- Other information sources such as a customer feedback survey and "DWC Report Card".

Mr. Young then gave a synopsis of IAIABC's Electronic Data Interchange (EDI) project, which involves the adoption of national standards to enable electronic reporting by and data sharing among all states. This project is designed to reduce the costs due to completing and processing paper reports and eliminate the mistakes made due to the various information requirements of different states. The EDI project has formulated a grid comprising the following reports:

1. First Report of Injury
2. Subsequent Report (benefit payments)
3. Proof of Coverage (who is insured by whom and for what periods of time)
4. Medical Report (diagnosis, treatment and costs)
5. Litigation Report
6. Vocational Rehabilitation Report

Mr. Young said that several DWC staff are participating in the EDI project -- in the national development committee, in the medical report group, in the technical committee on edits and acknowledgments, and in the subsequent report committee.

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DWC has conducted a technical pilot of electronic data reporting with six claims administrators that involved sending and receiving information and providing acknowledgments. Mr. Young stated that the pilot worked well but it remains to be determined what data elements will be collected and what information is to be provided.

The next meeting regarding the IAIABC EDI project will be held on February 15 and every other week. Mr. Young hopes to reach a conclusion by May 1, 1995. A report is due to the Legislature on July 1, 1995 as which time Mr. Young is planning to ask for funding to carry the project out.

Commissioner Rankin asked how the EDI project deals with the confidentiality issue. Mr. Young responded that the confidentiality issue is a concern of his and a determination needs to be done regarding how it will be addressed. Mr. Young said that it is a balance between the Public Records Act and the Privacy Act to get the information to those with a legitimate use for it and while screening out those who do not.

Commissioner Vach asked if the intent was to just have the information electronically stored or if DWC planned to develop the system for claims administration. Mr. Young replied that the system would allow electronic recording of every industrial injury in the state and, in effect, would be an electronic claims file. Commissioner Vach observed that all claims administrators would want to verify the information. Mr. Young said that system edits would partially insure valid data, and, in theory, the data could be made accessible to interested parties and other agencies. When the standards are developed, they will conform to ANSI<sup>2</sup> standards.

Mr. Young disclosed that the project will be implemented in several phases. The first phase will determine what data is to be collected. The second phase will involve collecting the data electronically. The third phase will be voluntary reporting of information. In one or two years, Mr. Young expects to mandate that the information be collected electronically.

Chairman Steinberg asked if Labor Code Section 138.6 was the mandate for the information system, Mr. Young responded that it was, and Chairman Steinberg replied that it could mean almost anything. (See Attachment III) Chairman Steinberg commented that it was hard to determine the legislative intent and Mr. Young replied that that was why he was trying to get a political consensus by holding the twice-monthly meetings.

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<sup>2</sup> American National Standards Institute

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Construction Carve-Out

Mr. Young reported on the "construction carve-out" that was one of the bills in the 1993 workers' compensation reform package and is reflected in Labor Code Section 3201.5. A construction industry firm that has a collective bargaining agreement with a real union can have an exclusive panel of medical and vocational rehabilitation providers as an alternative dispute resolution mechanism.

Mr. Young said that the initial reaction from the workers' compensation community was a lot of requests to review alternative dispute resolution plans from entities that did not qualify as construction industry. Under the original provisions of the construction carve-out, the administrative director was to look at the proposed agreements, see if they complied with the law, and issue comments, but the division did not have approval/disapproval authority. A revision in 1994 gave the administrative director the power of approval and allowed the division to insure that the parties were eligible to participate. DWC promulgated regulations after the revision and to date has issued three approval letters<sup>3</sup> and one is pending.

Mr. Young said that this was an experiment -- there was a lot of uneasiness out there on one hand and a lot of expectations on the other hand -- and that he expected the limits of this program will be tested in the courts. He said that this should be interesting to watch over the next few years.

Chairman Steinberg asked if there were similar programs in other states. Mr. Young said that there was a small project in Massachusetts that has not experienced much dispute or controversy at all. Mr. Young mentioned that an evaluation of the construction carve-out had to be done in 1996 and that DWC was starting to develop the evaluation process.

Standardize District Office Procedures and Monitor Judge (Referee) Performance

Mr. Young said that standardizing district office procedures and monitoring judge performance became issues after DWC received repeated complaints from the

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<sup>3</sup> Approval letters have been issued to:

- ARB, Inc., the project contractor on the Domenigoni Reservoir, soon to be under construction near Hemet, and the State Building and Construction Trades Council of California, AFL-CIO.
- The Southern California Conference of Carpenters, AFL-CIO, and six multi-employer groups -- United General Contractors, Inc., California Wall & Ceiling Contractors Association, Associated General Contractors, Inc., Building Industry Association of Southern California, Inc., the Southern California Contractors Association, Inc., and the Pacific Rim Drywall Association.
- The 9th District Council of the International Brotherhood of Electrical Workers, AFL-CIO, and a multi-employer group known as District 9 of the national Electrical Contractors Association, which consists of about 300 contractors throughout the state.

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workers' compensation community that different procedures were being followed in various DWC district offices.

Mr. Young remarked that there were several reasons for this:

- The agency has been a budgetary step child and did not receive adequate funding.
- The district offices were left to fend for themselves, and they did.
- There is a structural problem in the way that the agency is organized; 27 offices report to one person and 27 offices operate on their own.

Mr. Young stated that DWC is doing several things to alleviate these problems:

- Update the DWC Policy and Procedure (P&P) Manual which has not been updated for many years. Former Administrative Director Walter Brophy has been retained to update the P&P, which is expected to be completed during the next three months.
- Develop a Reorganization Plan to establish three DWC regional managers who will insure that policies are carried out on a consistent basis. The Reorganization Plan, which will reduce the manager-to-employee ratio, has been submitted to the Department of Personnel Administration.
- Increase staff training. When the 1993 reform legislation passed, training was provided for all DWC professional staff. All new workers' compensation judges receive a consistent training course. In the future, DWC plans to have a program of continuous training for WC Judges.
- Deal with the backlog of liens. After consulting with the workers' compensation community, a backlog policy was issued by Mr. Young and Diana Marshall, the Chair of the Workers' Compensation Appeals Board. That policy states that the DWC is to deal with liens along with the case-in-chief. The WC Judge is not to sign the settlement document until a good faith effort has been made to resolve the liens.

Mr. Young said that DWC investigates all complaints that are received regarding inconsistency. At times, some real problems have been uncovered. He mentioned that the Fresno DWC office was "in another world" with respect to Compromise and Releases.

Mr. Young stated that a real problem results from the DWC's inability since 1990 to direct venue. Because of this restriction, the district offices have different volumes



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of WCAB cases -- some offices are inundated and some are underutilized. Some offices are not being used to their potential since it is difficult and expensive to get out of facility leases and move staff around. There is no fluid way to deal with changes in the workload.

Chairman Steinberg asked for a clarification of the venue problem. Mr. Young replied that the problem really showed up in Los Angeles County. Previously, an injured worker had to file in the specific DWC district office determined by a venue system based on the zip code of the injured worker's residence, the location of the injury, or the office of his or her attorney. Now, an injured worker may file at any DWC district office in the county of the injured worker's residence, the location of the injury, or the office of his or her attorney. DWC opened new offices in Agoura Hills and Pasadena to draw off some of the workload, but with the new venue rule, this has not happened.

Mr. Young added that workers' compensation judges use their own discretion whether a lien should be handled before the case is settled or not. Mr. Young indicated that as Administrative Director he had some limitations -- he cannot tell WC judges to approve Compromise and Releases.

Commissioner Vach asked if the proposed addition of regional managers would provide better accountability of the WC Judges and if performance standards could be enforced. Mr. Young replied if there is a clear set of expectations and if the judges are closely monitored, then they will come around. If they do not, they can be disciplined and ultimately dismissed.

Commissioner Vach then asked if the WC Judges can be subject to the same standards as Superior Court Judges and Mr. Young replied that they can. Mr. Young stated that recent legislation (AB 1252 - Mountjoy) requires the administrative director to develop regulations requiring WC Judges to comply with the Code of Judicial Conduct adopted by the Conference of California Judges. Mr. Young stated that DWC had contracted with the Josephson Institute, which had done some similar work for the Legislature, to conduct interviews within the workers' compensation community with respect to ethical issues and concerns. The Josephson Institute then held three sessions with the WC Judges and conducted a survey with WC Judges, attorneys and claims administrators to get a broader sense of what their concerns are. Mr. Young stated that he received a draft Code of Judicial Conduct with additions for workers' compensation judges from the Josephson Institute last week. Mr. Young wants to adopt this expanded Code of Judicial Conduct with explicit enforcement provisions as regulations. In response to Commissioner Vach's question, Mr. Young stated that he was satisfied with these tools as a way of monitoring judge performance, but suggested that the question be asked again in one year.

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Commissioner Vach asked Mr. Young what he thought of the workers' compensation "judge" versus "referee" issue. Mr. Young replied that he is taking the fifth (amendment) on that. Mr. Young said that he is trying to get through this issue by resolving concerns which led to this action in the first place -- the new Code of Judicial Conduct will help.

Mr. Young stated that the proposed reorganization to establish regional supervisors and the adoption of the expanded Code of Judicial Conduct will assist in DWC's efforts to monitor judge performance.

Mr. Young also implemented a procedure whereby the Presiding Judge in each office would be provided with a computer print-out listing those cases on which no action had been taken for 60 days or more following a hearing or receipt of a settlement document. However, the procedure has not worked well because many actions were not being recorded in the WCAB online system. DWC is now cleaning this up and it is still a useful tool.

Mr. Young wants to reprogram the computer system to answer questions such as how many cases have come in, have gone out, how long does it take for a case to be resolved and what happened.

Mr. Young stressed that DWC does discipline staff who are not fit for duty, not performing, or engage in sexual harassment.

Chairman Steinberg asked Mr. Young about the status of the Conflict of Interest regulations for Qualified Medical Examiners required by Labor Code Section 139.2(o). Mr. Young stated that he had attempted to place a proposal in the medical/legal fee schedule regulations to the effect that medical evaluators cannot have too much business with either side, applicant or defense, but that provision was shot down by everyone. He said he was able to implement regulation 8 CCR 9794(f) which provides that medical evaluators who violate the ban on self-referrals in the evaluation process cannot be paid. He also suggested to the Commission that he needed some guidance regarding what was required to fulfill the L.C. §139.2(o) mandate. Chairman Steinberg asked if the Commission should report that to the Legislature since he was not sure what their intent was. Mr. Young responded that he thought that was a good idea.

Commissioner Vach asked Mr. Young about baseball arbitration and Mr. Young replied that he had not heard yet.

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*Adoption of Minutes*

Minutes of the Commission meeting on January 12, 1995 were submitted for approval by Christine Baker. Commissioner McLeod moved that the minutes be adopted, Commissioner Rankin seconded the motion, and the motion was carried by unanimous vote of the Commission.

*Public Comments I*

Sue Evans approached the guest podium to discuss the problems she has been having with the workers' compensation system. Ms. Evans is the Risk Manager and Claims Administrator for TIMEC, a self-insured refinery maintenance contractor based in Vallejo, California.

Ms. Evans noted that the workload backlogs in the WCAB district offices were not addressed by Administrative Director Casey L. Young in his report to the Commission. She said that her company is subject to penalties for delays and described the history of the delays in five cases that her company has pending before the WCAB.

Ms. Evans stated that she felt that her company was being prejudiced against since she needs to meet certain timeframes but that the applicant, the applicant's attorney, and the workers' compensation judge were not penalized for delays.

Chairman Steinberg asked Ms. Evans if she were suggesting that there be penalties for those who cause delays. Ms. Evans said that, if the applicant causes delays, perhaps there could be a penalty assessed against the applicant's award. She also suggested that the applicant and defense attorneys could be held to a standard of conduct including sanctions for delays. She also wants the WC Judge to be held accountable in some manner.

Ms. Evans said that a case had been continued four times because the WC Judge had too much on calendar. Her company had asked the Presiding WC Judge to intervene, but the PWCJ had been reluctant to do so. She says that her cases have gone to a Mandatory Settlement Conference just to get a trial date and wants to see a mechanism in place to get a case to trial and get it settled.

Chairman Steinberg noted that Administrative Director Casey L. Young was still in attendance and asked him if he would like to address this issue.

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Mr. Young approached the guest podium and said that Ms. Evans had identified the box that the DWC was in. Mr. Young stated that the DWC oversets the WC Judge's calendars consciously (like airlines overbook flights) since many cases settle before going to trial. But there is no way to predict which cases will settle and which will not and sometimes when cases don't settle, there are calendar conflicts. Mr. Young said that he could reduce the number of calendar settings but that would waste time and extend the calendar further into the future.

Mr. Young said that he was looking at a variation of a master calendar, whereby cases are set before the Board in general, and not before an individual WC Judge. The master calendar concept allows for flexibility. Mr. Young stated that the DWC will try the master calendar in one office on a pilot basis.

Mr. Young acknowledged that the situation that Ms. Evans described is a huge problem and one to which DWC does not yet have a solution. Mr. Young said that he would appreciate ideas.

Commissioner McLeod asked if any thought had been given to extend the WC Judges' working hours or offering a night court. Mr. Young replied that he has considered that himself but when he brings it up, he just gets laughs. In order to provide increased services, the DWC would need more WC Judges.

Commissioner Rankin asked how frequent was the problem of no shows -- case parties who fail to show up at the hearing thereby causing it to be rescheduled. Mr. Young answered that he did not have any figures but that it was a constant complaint. However, the bigger problem is the calendar problem that he hopes to address with the master calendar.

Mr. Young also stated that the 1994 workers' compensation reform legislation established sanctions for delaying the resolution of a workers' compensation case. (See Attachment IV for Labor Code Section 129.5 -- Administrative and Civil Penalties; Schedule of Violations)<sup>4</sup>

Chairman Steinberg asked Ms. Evans if she had further comments. He noted that her concerns had been heard all the way to the top of the Division of Workers' Compensation.

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<sup>4</sup> Note that Labor Code Section 129.5(g) directs that "all moneys collected under this Section shall be deposited to the State Treasury and credited to the Workplace Health and Safety Revolving Fund." This Fund is the sole funding source for the Commission on Health and Safety and Workers' Compensation.

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*Executive Officer's Report on Proposed Studies or Projects*

Chairman Steinberg called upon Executive Officer Christine Baker to present her status report on the proposed Commission projects.

- Issue an annual report on the state of the California workers' compensation system, including recommendations for administrative or legislative modifications which would improve the operation of the system, pursuant to Labor Code Section 77(a).

Status: Ms. Baker noted that the Commission members have been asked to provide their suggestions and ideas for a particular focus or emphasis to be included in the Annual Report. The Commission staff has now begun outlining and gathering information to include in the report and a preliminary draft is expected by April.

There was some discussion among the Commission members on how to incorporate all the ideas, since one Commissioner's idea may not concur with those of others. Ms. Baker said that each Commissioner's suggestions would be forwarded to the other Commission members.

- Review for approval a proposal by the Administrative Director of the Division of Workers' Compensation as required by Labor Code Section 4660 to change the standard disability ratings.

Status: This topic was addressed by Administrative Director Casey L. Young.

- Consult with the Administrative Director of the Division of Workers' Compensation, as required by Section 139.2(o) of the Labor Code, on the adoption of regulations prohibiting a Qualified Medical Evaluator (QME) from requesting or accepting any compensation or other thing of value from any source that does or could create a conflict with the QME's duties as a medical evaluator.

Status: This topic was addressed by Administrative Director Casey L. Young.

- The Commission's grant program to assist industrial injury prevention programs.

Status: This Commission and the former Health and Safety Commission have awarded grants to employers and/or employee unions to improve injury and illness prevention programs. The projects that are funded by these grants often

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produce written material and/or videos that are submitted to the Commission. These grant products are maintained in a library by Commission staff and are loaned out upon request.

The Commission's Grant Product Library currently consists of 33 products from past grant projects. The Commission is awaiting the receipt of 15 more products and, in the future, will receive products from the 9 grants awarded in 1994. The Grant Product Availability Catalog has been updated to include the 1994 grant recipients, newly received products and revised availability dates.

Ms. Baker reported that there is currently a backlog of 503 outstanding requests for grant products. The Commission library currently has only one or two copies of each finished product. As a result, the more heavily requested products end up with a substantial waiting list. In several cases, there are more than 30 people waiting for a single product. In order to fill the backlogged orders, it will be necessary to make duplications of the finished products. Ms. Baker described several alternative solutions regarding the handling of the Grant Product Library and the elimination of the backlog of requests for products.

The Commission staff recommended that the Commission contract out to make copies of each current grant product in proportion to the number of requests received. The Commission would maintain at least two copies of the least requested products up to 20 copies of the most requested products. The Commission would also purchase a monitor and a dual-deck video cassette recorder so that it could handle the reproduction of future grant products in-house. This combination of approaches will enable the Commission to reduce its backlog quickly without creating a surplus of copies and provide for future reproduction of grant products immediately. This alternative is estimated to cost between \$5200 and \$5900.

Chairman Steinberg asked how to monitor the lending out of grant products. Ms. Baker responded that a log was kept of who has which grant product but that the library ran on the honor system and it worked well. Commission Rankin stated that he was opposed to contracting out but saw the necessity of it in this instance. Commissioner O'Hara asked about the possibility of paying for the use of grant products. Ms. Baker replied that the Commission loans out one copy of the grant product and the borrower then can reproduce it at his or her expense. Furthermore, the Commission is not set up to handle monetary transactions which would also take staff time.

Carlyle Brakensiek of the California Society of Industrial Medicine and Surgery suggested that the DWC Information System described by Administrative Director Casey Young could be utilized to scan in the grant products and have them available electronically. Chairman Steinberg commented that such an

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approach could be closely looked at in the future but the immediacy of the backlog precluded it from being a solution now. Additionally, the DWC Information System could not accommodate video grant products.

Commissioner Rankin moved that the Commission adopt the recommended grant product library alternative, Commissioner Vach seconded, and the motion carried unanimously.

- The experience of the injured worker with the California workers' compensation system.

Status: At its January 1995 meeting, the Commission voted to proceed to contract with UC Berkeley's Labor Occupational Health Program (LOHP) to evaluate services provided to injured workers by the California state agency and other case parties and organizations. Ms. Baker reported that an interagency agreement is in process and will be submitted by DIR to the University of California and then to the Department of General Services for approval. A request to expedite the approval of this agreement has been made.

The study will include a survey component to identify other problem areas and services provided to the injured worker. The project will consist of two phases over a period of 18 months. At the end of 12 months, LOHP will provide the commission with specific recommendations for improving current information services. At the end of 18 months, the UC Data/Survey Research Center will compile the data collected from the mail survey. Total estimated costs are \$167,500 including \$34,500 for University of California overhead charges. The Commission has requested an exemption to overhead charges.

- The impact of Vocational Rehabilitation reform on California's workers' compensation program.

Status: Ms. Baker related that Commission staff have been meeting with UC Berkeley's Data/Survey Research Center to develop a proposal and that a draft proposal has been distributed to the Commission members. The proposal costs are not completely tied down yet, because they depend on the difficulty of obtaining the data. Cost ranges are included for two study components, a records comparison and a survey component. The study proposal also extends over a three year period.

Briefly, the study is designed to evaluate the impact of the reform legislation on the Workers' Compensation - Vocational Rehabilitation system. The study will also establish baseline data to enable continued monitoring of Vocational Rehabilitation Services.

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Ms. Baker said that Commissioner McLeod indicated that he would like to discuss the possibility of comparing the Rehabilitation experience of Public Sector employees to Private Sector employees. This would be a function of the sample selection and analysis and it is possible to make this kind of comparison if the Commission wished.

Ms. Baker said that she had invited Frank Neuhauser of the UC Data/Survey Research Center to address questions from the Commission. Mr. Neuhauser pointed out that there were a number of ways to collect the necessary information. He said that the best and easiest way was the JTPA (Joint Partnership Training Act), a survey in California that took into consideration several economic factors in the composition of its program. The same techniques and parameters could then be used to normalize the data.

Mr. Neuhauser stated that if the project looked at Rehabilitation cases from 1990, results would be obtained faster since most of such cases have already gone through the Vocational Rehabilitation system. The study could use 1993 cases because the economic conditions are similar to 1994, but since the cases are not as mature, the "results won't be as robust."

Chairman Steinberg asked for confirmation that the project would cost about \$400,000 and be carried out over a three year period. Mr. Neuhauser replied that the cost was only an estimate as Ms. Baker had pointed out. Mr. Steinberg remarked that the amount was a significant part of the Commission's budget and that more time was needed to review the proposal. Commissioner Rankin asked if the cost of the project could be pinned down by the next meeting and Mr. Neuhauser agreed to provide more concrete figures at the next Commission meeting on March 9, 1995.

Commissioner Rankin asked Ms. Baker when the deadline was to encumber the funds for the project. Ms. Baker replied that since it takes two months to get a request through agency channels, the Commission would need make such a request by April 1995 in order to have funds encumbered by the end of the current fiscal year on June 30, 1995. Chairman Steinberg said that this issue would be brought to closure at the next Commission meeting in March.

- The impact of the Medical/Legal reform on California's workers' compensation program.

Ms. Baker said that the Commission staff has been meeting with staff of the Division of Workers' Compensation and with UC Berkeley's Data/Survey



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Research Center to develop a proposal for this project also. A draft proposal has been distributed to the Commission members.

The total costs for this project are \$12,740. The analysis will be based on a data set created by the Workers' Compensation Insurance Rating Bureau. The timeline for this project is nine months.

WCIRB collects and has published information on medical legal costs. The proposal will take advantage of such data collection by the WCIRB and add a few additional data elements to the collection. This study will allow the Commission to assess the changes in frequency and cost by type of requester, by type of evaluator (treating physician or QME) ; by specialty and also look at these changes by region.

This analysis will provide the Commission with information regarding the method by which WCAB cases are resolved -- Compromise and Release, Stipulated award; take nothing; finding and award; dismissal; or voluntary payments. This assessment would also be able to determine if a request for medical evaluation is made by the injured worker, the employer/carrier or the Agreed Medical Examiner or Independent Medical Examiner.

Medical costs by calendar year and or by the elapsed time from the injury date could also be determined. From the study, we could also get a break down of whether or not an injured worker is represented by an attorney, and does this affect the cost per case of the medical legal exams, does it affect the specialty of provider of exams and whether or not the reforms had any different impacts on represented and unrepresented cases.

Chairman Steinberg said that he liked the cost of this proposal and suggested that the Commission deal with it at the next meeting.

Commissioner Vach stated that he wanted Christine Baker to report on what Casey Young is doing in this area. Frank Neuhauser observed that the WCIRB survey deals only with insurers, not self-insureds. Ms. Baker stated that any inclusions that the Commission wants on the WCIRB survey documents must be requested by March, to give the WCIRB sufficient time to make those changes.

- A Comparison between the current Industrial Injury Prevention Programs in California and those in other states

Status: Ms. Baker stated that the Commission staff has begun to collect such data from various states as contact is made with other programs.

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- The Proposed Loss Control Program

Status: Ms. Baker said that the Commission staff has begun background research and is looking at loss control programs in other states. The minutes from two loss control advisory committee meetings held late last year have been distributed to Commission members.

- Universal Information System for Workers' Compensation

This topic was addressed by Administrative Director Casey L. Young.

- Workers' Compensation Programs in Other States

Status: Ms. Baker noted at the last meeting she was asked to develop alternatives for obtaining information from other states. An estimate of the costs to travel to various states in which the Commission had expressed interest has been distributed to the Commission members.

In addition, the idea arose for the California Commission to host a meeting to discuss the successes and problems of other states' current workers' compensation and industrial injury prevention programs. The Commission could discover what is happening in other states and that knowledge could assist the Commission in determining what programs merit further study. If this idea is agreeable, a specific agenda could be developed for the Commission's review.

Commissioner Vach observed that there were benefits to both ways of collecting information from other states. By traveling to the states of interest a more intensive look would be possible. On the other hand, a symposium would enable all the Commissioners and the workers' compensation community to discover what is going on in other states. Ms. Baker noted that the Commission could do both. Chairman Steinberg suggested that the Commission give this topic further thought and revisit it at the March 1995 meeting.

- The impact of the elimination of the California Minimum Rate Law on California's workers' compensation program.

Status: Ms. Baker stated that Commission staff are currently doing background research on this project in order to develop a proposal to study this area. Chairman Steinberg stated that the Commission will address this topic at the next meeting. Commissioner Vach asked if the California Workers' Compensation Institute is doing any studies in this area. Ed Woodward, President of the CWCI, said he would be willing to make a report at the next meeting.

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*Commission Funding*

Chairman Steinberg stated that the Commissioners were concerned about the uncertainty of the Commission funding because it was based upon the collection of penalties assessed by DWC's Audit Unit and those had been declining. He suggested that a legislative change be sought to obtain permanent funding for the Commission. Ms. Baker said that proposed language for permanent funding had been submitted to Legislative Counsel.

Commissioner Rankin stated that Senator Lockyer is willing to include the Commission's bid for permanent funding into a bill dealing with Cal-OSHA Targeted Inspection. Commissioner Rankin suggested that the Commission try to establish an adequate base budget. Then the bill could be crafted so that monies from the new funding source would supplement the difference between the penalty collection and the Commission base budget. Ms. Baker said that this could be done but recommended that the bill should also ask for a one-time appropriation; otherwise, the Commission would always have a one-year funding lag.

*Public Comments II*

Chairman Steinberg asked if there were any additional public comments. There was no reply.

*Other Business*

Commissioner McLeod asked the other Commission members if the Commission should send a letter to Commissioner Jim Green to find out what his intentions are regarding continuing as a member of the Commission. During the discussion it was noted that Commissioner Green has been absent from several Commission meetings and some Commissioners have heard that he intends to resign. Chairman Steinberg directed Christine Baker to send such an inquiry to Commissioner Green.

*Future Meetings*

The next meeting of the Commission, scheduled for Thursday, March 9, 1995, will be held at 10 am in room 1138 on the first floor of the Los Angeles State Building located at 107 South Broadway.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

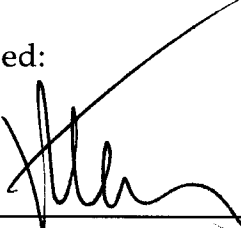
February 9, 1995 San Francisco

*Adjournment*

A motion to adjourn the meeting was made by Commissioner O'Hara, seconded by Commissioner Rankin and passed unanimously. The meeting was adjourned at 1:05 PM by Chairman Robert B. Steinberg.

Attachments: I Meeting Agenda  
II *DWC Newsline* (Bulletin 94-9) dated November 4, 1994  
III Labor Code Section 138.6  
IV Labor Code Section 129.5

Approved:

  
Robert B. Steinberg, Chairman

3/9/95  
Date

Respectfully submitted,

  
Christine Baker, Executive Officer

STATE OF CALIFORNIA

PETE WILSON, *Governor*

DEPARTMENT OF INDUSTRIAL RELATIONS  
**COMMISSION ON HEALTH AND SAFETY  
AND WORKERS' COMPENSATION**

30 Van Ness Avenue, Rm. 2122  
San Francisco, CA 94102  
Telephone (415) 557-1304  
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# **NOTICE OF PUBLIC MEETING**

## **Commission on Health and Safety and Workers' Compensation**

**Date:** Thursday, February 9, 1995

**Time:** 10:00 a.m. until business is completed

**Place:** State Office Building  
455 Golden Gate Avenue  
First Floor Auditorium, Room 1194  
San Francisco, California

### **AGENDA**

- I. Call to Order  
Minutes from the January 12, 1995 meeting.  
Robert B. Steinberg, Chairman
- II. Discussion Regarding New Studies or Projects
- III. Reports from Casey L. Young, DWC Administrative Director  
Permanent Disability Rating Process: status of the backlogs  
Information Systems Development  
Status of the "construction carve-out" pursuant to Labor Code Section 3201.5.  
Status of the efforts to standardize district office procedures and monitor judge performance.
- IV. Public Questions/Comments
- V. Other Business
- VI. Adjournment

Note: The agenda may be adjusted, if necessary, depending upon the time needed for discussion of each item.

State of California

- Policy & Procedure
- Take Note
- Milestones

# DWCNewsline

Division of Workers' Compensation  
Casey L. Young, Administrative Director

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455 Golden Gate Avenue, Fifth Floor, San Francisco, CA 94102 (415) 703-3731

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Bulletin 94-9  
November 4, 1994

## DWC ENCOURAGES WCAB SETTLEMENTS IF SUMMARY RATING NOT TIMELY ISSUED

The Division of Workers' Compensation is taking another step towards resolving the delays associated with the backlog of requests for summary rating determinations. Claims administrators are being encouraged to attempt to reach proposed settlements with unrepresented injured workers if the parties have not received a summary rating within the statutorily required 20 days, and then submit the settlements to the local WCAB office for review and approval.

Since 1991, the law has provided a mechanism for injured workers who are not represented by an attorney to obtain a permanent disability rating based on a medical evaluation by a Qualified Medical Evaluator (QME) selected by the worker from a three-member panel randomly assigned by the state Industrial Medical Council. This summary rating process is intended to provide unrepresented workers an expeditious, fair permanent disability rating without the need for litigation. DWC is required to provide a rating of medical evaluations it receives within 20 days.

For a variety of reasons, DWC has been unable to issue ratings within the statutory 20 day period. A large backlog of summary rating requests has developed at many of the offices around the state. Statewide, approximately 20,000 cases await ratings from DWC's Disability Evaluation Unit. In some offices it now takes up to a year to obtain a rating. In addition, approximately 2,500 cases are awaiting a decision on a request for reconsideration of a summary rating.

The additional resources DWC has devoted to these functions has improved the situation, but it remains intolerable for both injured workers who are waiting for their benefits and claims administrators who are trying to promptly resolve cases.

The law requires unrepresented workers injured after January 1, 1991 to obtain an evaluation from a QME in accordance with the statutory requirements, and prohibits the filing of an application for adjudication (or a declaration of readiness for post January 1, 1994 injuries) until the appropriate medical evaluation has been

## Attachment II

performed. Additionally, settlements cannot be approved unless the appeals board determines the settlement is in the best interest of the employee and that proper procedures have been followed in determining the permanent disability rating.

In the normal course of events, a settlement involving an unrepresented worker should not be approved unless a summary rating has been obtained. However, once the statutory deadline for DWC to issue a rating has passed, there is no way that "proper procedures" can ever be considered to have been followed. Therefore, where a summary rating has not been issued within the 20 day statutory deadline, DWC is encouraging the parties to attempt to negotiate a settlement and submit it to the local office of the appeals board for approval.

To assure prompt processing, the following documents should be included when submitting these settlements:

- WCAB Data Entry Form;
- All medical reports;
- Completed "Employee's Permanent Disability Questionnaire" (DEU Form 100);
- Claims administrator's rating which led to the proposed agreement;
- Job description or job analysis, if available;
- Wage statement for employees with less than maximum earnings;
- Signed Stipulated Findings and Award or Compromise and Release Agreement;
- DEU Summary Rating, if completed during or after the settlement discussions.

Upon receipt, the Disability Evaluation Unit will be internally advised that a settlement has been received so they know a rating is no longer required. However, DEU will be consulted as necessary to review proposed ratings that are complex or appear to be inaccurate.

If the settlement proposal appears to be inadequate, the claims administrator will be advised that the settlement will be set for hearing on adequacy unless it is increased to an amount determined appropriate by the assigned appeals board personnel. Cases not resolved in this manner will be set for hearing.

Parties who have requested reconsideration of a summary rating should also feel free to send a letter withdrawing their request at any time and instead resolve the case by submitting a proposed settlement to the local office of the appeals board.

DWC will concurrently monitor the success of the pilot project recently initiated in San Bernadino to expedite the resolution of cases through informal conferences with Information and Assistance Officers.

###

**California Labor Code Section 138.6**  
**(Operative January 1, 1994)**

The Administrative Director, in consultation with the Insurance Commissioner and the Workers' Compensation Insurance Rating Bureau, shall develop a workers' compensation information system to do the following:

- (a) Assist the department to manage the workers' compensation system in an effective and efficient manner.
- (b) Facilitate the evaluation of the efficiency and effectiveness of the benefit delivery system.
- (c) Assist in measuring how adequately the system indemnifies injured workers and their dependents.
- (d) Provide statistical data for research into specific aspects of the workers' compensation program.

It is the intent of the Legislature that the information system be compatible with the Electronic Data Interchange System of the International Association of Industrial Accident Boards and Commissions. The director shall issue a report on the development of the system, and recommendations for any necessary legislative action, no later than July 1, 1995, and shall, upon request, make the report available to the Governor, the Legislature, and the public.



## **Labor Code Section 129.5**

### **Administrative and Civil Penalties; Schedule of Violations**

- (a) The administrative director shall assess an administrative penalty against an insurer, self-insured employer, or third-party administrator for any of the following:
  - (1) Failure to comply with the notice of assessment issued pursuant to subdivision (c) of Section 129 within 15 days of receipt.
  - (2) Failure to pay when due the undisputed portion of an indemnity payment, the reasonable cost of medical treatment of an injured worker, or a charge or cost of implementing an approved vocational rehabilitation plan.
  - (3) Failure to comply with any rule or regulation of the administrative director.
- (b) The administrative director shall promulgate regulations establishing a schedule of violations and the amount of the administrative penalty to be imposed for each type of violation. The schedule shall provide for imposition of a penalty of up to one hundred dollars (\$100) for each violation of the least serious type and for imposition of penalties in progressively higher amounts for more serious types of violations, with the penalty for the most serious types of violations to be set at up to five thousand dollars (\$5,000) per violation. The administrative director is authorized to impose penalties pursuant to rules and regulations which give due consideration to the appropriateness of the penalty with respect to the following factors:
  - (1) The gravity of the violation.
  - (2) The good faith of the insurer, self-insured employer, or third-party administrator.
  - (3) The history of previous violations, if any.
  - (4) The frequency of the violations.
- (c) The notice of penalty assessment shall be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. The notice shall be in writing and shall describe the nature of the violation, including reference to the statutory provision or rule or regulation alleged to have been violated. The notice shall become final and the assessment shall be paid unless contested with 15 days of receipt of the insurer, self-insured employer, or third-party administrator.

**Labor Code Section 129.5**

- (d) In addition to the penalty assessment permitted by subdivision (a), the administrative director may assess a civil penalty, not to exceed one hundred thousand dollars (\$100,000), upon finding, after hearing, that an employer, self-insured employer, or third-party administrator for an employer has knowingly committed and has performed with a frequency as to indicate a general business practice any of the following:
- (1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation due.
  - (2) Refused to comply with known and legally indisputable compensation obligations.
  - (3) Discharged or administered compensation obligations in a dishonest manner.
  - (4) Discharged or administered compensation obligations in a manner as to cause injury to the public or those dealing with the employer or insurer.

Upon a second or subsequent finding, the administrative director shall refer the matter to the Insurance Commissioner or Director of Industrial Relations and request that a hearing be conducted to determine whether the certificate of authority, certificate of consent to self-insure, or certificate of consent to administer the claims of self-insured employer, as the case may be, should be revoked.

- (e) An insurer, self-insured employer, or third-party administrator may file a written request for a conference with the administrative director within seven days after receipt of the notice of penalty assessment issued pursuant to subdivision (a) or (d). Within 15 days of the conference, the administrative director shall issue a notice of findings and serve it upon the contesting party by registered or certified mail. Any amount found due by the administrative director shall become due and payable 30 days after receipt of the notice of the findings. The 30-day period shall be tolled during any appeal. A writ of mandate may be taken from the findings to the appropriate superior court upon the execution by the contesting party of a bond to the state in the principal sum that is double the amount found due and ordered by the administrative director, on the condition that the contesting party shall pay any judgment and costs rendered against it for the amount.
- (f) Nothing in this section shall create not eliminate a civil cause of action for the employee and his or her dependents.
- (g) All moneys collected under this section shall be deposited to the State Treasury and credited to the Workplace Health and Safety Revolving Fund.